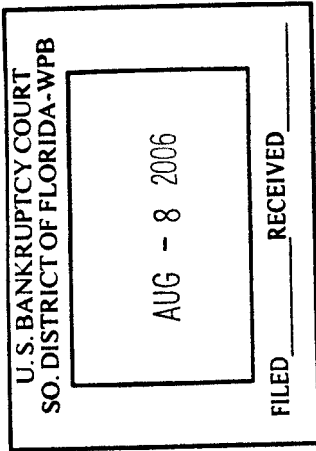
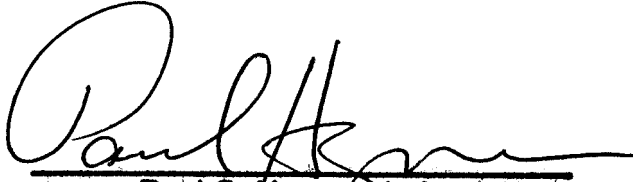


ORDERED in the Southern District of Florida on

July 8, 2006.





**Paul G. Hyman, Judge**  
**United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF FLORIDA**  
**WEST PALM BEACH DIVISION**

**In re:**

**CASE NO.: 05-33058-BKC-PGH**

**Eric R. Rieger,**  
**Debtor.**

**CHAPTER 13**

**Eric R. Rieger,**  
**Plaintiff,**

**ADV. NO.: 05-6170-BKC-PGH-A**

**v.**

**Bari Jill Rieger,**  
**Defendant.**

**ORDER DETERMINING EQUITABLE DISTRIBUTION VESTED AND CONVEYED UPON**  
**ENTRY OF STATE COURT JUDGMENT**

**THIS MATTER** came before the Court for trial on July 12, 2006. On December 19, 2005, Eric R. Rieger ("Debtor") filed a Complaint to Declare Dischargeability Pursuant to Section 523(a)(5) and For Turnover (the "Complaint") seeking a determination relating to

Debtor's obligations pursuant to a *Final Judgment of Dissolution of Marriage* entered November 10, 2004 ("Dissolution Order") and a *Separate Memorandum of Factual Findings and Rulings With Dependent or Minor Children* entered December 4, 2004 ("State Court Judgment"). The Dissolution Order and the State Court Judgment were entered in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, in the case styled *Eric Reiger v. Bari Jill Rieger*, Case No.: FM03-23587 Division (36)(93). On January 17, 2006, Bari Jill Rieger (the "Ex-Spouse") filed an *Answer, Affirmative Defenses, Counterclaim and Third Party Claim*<sup>1</sup> (the "Counterclaim"). A Pretrial Order limiting the issues<sup>2</sup> and setting forth the stipulated facts was entered on June 19, 2006. The facts of this matter are not in dispute.

#### **STIPULATED FACTS**

1. The Debtor filed a petition for relief under chapter 13 of the Bankruptcy Code on June 17, 2005 ("Petition Date").
2. The Dissolution Order granted the Debtor's request for partition of the marital home. The Dissolution Order determined that the marital home was to be listed for sale

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<sup>1</sup> On May 5, 2006, the Ex-Spouse filed a Voluntary Dismissal of Third Party Claims against Christopher N. Link, P.A. and Richard Celestino, M.A. ("Third Party Defendants"). On May 26, 2006 the Third Party Defendants filed a Motion to Tax Fees and Costs ("Motion to Tax") which was heard by the Court on July 7, 2006. The Motion to Tax was granted as to costs, but denied as to fees.

<sup>2</sup>The Pretrial Order lists the following issue, among others, for the Court's determination: "Whether the court can award attorneys' fees in this proceeding?" This issue was not raised by the parties at trial and the Court offers no opinion thereon.

within ten days and sold for the first contract offer at \$1.4 million or higher, or as agreed by the parties if lower than \$1.4 million. *Dissolution Order* at ¶6.

3. The State Court Judgment ordered:

Therefore, to equalize the distribution of the marital assets, the [Debtor] shall pay the [Ex-Spouse] \$37,957 [("Equitable Distribution")] from his share of his net proceeds from the sale of the marital home . . . ." *State Court Judgment* at 21.

4. The State Court Judgment awarded the Ex-Spouse permanent periodic alimony in the amount of \$3,750 per month. The State Court Judgment ordered the Debtor to pay the reduced amount of \$2,500 per month through February, 2010 and the full amount of \$3,750 per month starting March 1, 2010. To make up the difference the Debtor was ordered to pay lump sum alimony in the amount of \$67,721.25. This amount represented the present value of the reduction in monthly alimony through February, 2010. The Debtor's one-half share of a joint income tax refund was applied to this amount leaving a balance of \$41,969.25 (the "Lump Sum Alimony"). The Lump Sum Alimony was "to come from the [Debtor's] share of the net proceeds of the sale of the marital home to be paid to the [Ex-Spouse]." *Id.* at 28.
5. The marital home was sold on or about August 1, 2005 for \$1.3 million. All of the net proceeds from the sale of the marital home were disbursed to the Ex-Spouse. Although the State Court Judgment determined that \$79,926.25 of the Debtor's share of the proceeds from the marital home would go to the Ex-Spouse

for Equitable Distribution and Lump Sum Alimony, the Debtor's share of the net proceeds only amounted to \$56,968.00 (the "Debtor's Share"). There is no disagreement that the Debtor owes the Ex-Spouse the shortfall amount of \$22,958.25.

#### **CONCLUSIONS OF LAW**

Having considered the submissions of the parties, the arguments of counsel, and being otherwise fully advised in the premises, the Court makes the following conclusions of law.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2)(B) & (I).

The Debtor argues that the Debtor's Share should be applied first to the Lump Sum Alimony and then to the Equitable Distribution. Under the Debtor's theory, the Debtor's Share paid the Lump Sum Alimony in full and the balance of the Debtor's Share was then applied in partial payment of the Equitable Distribution. The Debtor argues that the Equitable distribution is an unsecured claim and that the partial Equitable Distribution payment in the amount of \$14,998.75 should be turned over to the estate. The Debtor maintains that as an unsecured claim the Equitable Distribution should be provided for in the plan with other unsecured claims. Under this analysis, if the Debtor's chapter 13 plan fails to fully pay unsecured claims, the unpaid balance of the

unsecured claims, including the unpaid balance of the Equitable Distribution, will be discharged.

The Ex-Spouse argues that under Florida law, the Equitable Distribution was vested and conveyed upon entry of the State Court Judgment. The Ex-Spouse further maintains that the balance of the Debtor's Share partially paid \$19,011 of the Lump Sum Alimony. Under the Ex-Spouse's analysis, the balance of the Lump Sum Alimony is nondischargeable and must be provided for in the Debtor's Chapter 13 plan.

Florida Statute § 61.075 "Equitable Distribution of Marital Assets and Liabilities" states in pertinent part:

- (2) If the court awards a cash payment for the purpose of equitable distribution of marital assets, to be paid in full or in installments, the full amount ordered shall vest when the judgment is awarded and the award shall not terminate upon remarriage or death of either party, unless otherwise agreed to by the parties, but shall be treated as a debt owed from the obligor or the obligor's estate to the obligee or the obligee's estate, unless otherwise agreed to by the parties.

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- (4) The judgment distributing assets shall have the effect of a duly executed instrument of conveyance, transfer, release, or acquisition which is recorded in the county where the property is located when the judgment, or a certified copy of the judgment, is recorded in the official records of the county in which the property is located.

A plain reading of the statute supports the position of the Ex-Spouse. Pursuant to Florida Statute § 61.075 (2), the Ex-Spouse's Equitable Distribution award vested prepetition, upon

entry of the State Court Judgment. At the same time the Debtor was necessarily divested of his equitable interest in the proceeds of the marital home in the amount of the Equitable Distribution. Pursuant to Fla. Stat. § 61.075(4), at the time of its entry the State Court Judgment also operated as a conveyance of the Debtor's equitable interest in the Debtor's Share of the proceeds for the Equitable Distribution. Thus, the Court finds that the Debtor's equitable interest in the Debtor's Share of the proceeds for the Equitable Distribution was not owned by the Debtor on the Petition Date, it did not become property of the estate, and it is not subject to turnover. The Court further finds that the excess of the Debtor's Share partially paid the Lump Sum Alimony leaving a balance of Lump Sum Alimony due to be paid by the Debtor to the Ex-Spouse.

There is little case law interpreting Fla. Stat. § 61.075, and no case law interpreting the statute under facts similar to the facts of this case. The Debtor cited only one case interpreting Fla. Stat. § 61.075, *In re Wald*, 248 B.R. 642 (Bankr. M.D. Fla. 1998). However the facts of *Wald* are quite different from the facts of this matter. Unlike this case where the Dissolution Order directed that the marital home be listed for sale within ten days and sold to the first contract offer that met requirements, the *Wald* settlement agreement contained no requirement that the debtor sell the property in question. Significantly, the *Wald* separation

agreement, which had been incorporated into a final judgment entered more than twenty years earlier, merely required that the debtor pay his ex-wife half of the proceeds **if** he sold the property. *Id.* Based on the unique facts of that case, the *Wald* court concluded that the final judgment did not operate as a conveyance of the specific real property in question. *Id.*

The Debtor also cited *In re Roberge*, 181 B.R. 854 (Bankr. E.D. Va. 1995), wherein an ex-spouse sought relief from stay to pursue an equitable distribution action for partition of Florida real property that was owned by the debtor and the ex-spouse as tenants in common. Unlike this case where the Ex-Spouse's interest was statutorily vested and conveyed *prepetition* upon entry of the State Court Judgment, in *Roberge* the non-debtor spouse sought relief from stay to pursue a *postpetition* equitable distribution action. *Id.* Thus, *Roberge* is not on point.

Although the Court finds Fla. Stat. § 61.075 dispositive, the Debtor's Notice of Filing Supplemental Authority argues that neither the State Court Judgment nor Fla. Stat. § 61.075 resolve the issue of whether the Debtor's Share should be applied first to the Equitable Distribution or first to the Lump Sum Alimony. The Court notes that Fla. Stat. § 61.08 "Alimony" subsection (2) states in pertinent part that:

In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

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(d) The financial resources of each party, the nonmarital and the marital assets and liabilities distributed to each.

Fla. Stat. § 61.08

Thus the Court finds additional support in Fla. Stat. § 61.08 for applying the Debtor's Share first to Equitable Distribution and then to Lump Sum Alimony because the equitable distribution award was as a matter of Florida law, a factor for the State Court Judgment's award of alimony.

The Court having heard the arguments of counsel, reviewed the applicable law and being otherwise fully advised in the premises hereby **ORDERS AND ADJUDGES** that:

1. Pursuant to Fla. Stat. § 61.075, upon the prepetition entry of the State Court Judgment, the Ex-Spouse's award of Equitable Distribution was vested and the Debtor's equitable interest in \$37,057 of the proceeds of the marital home was conveyed in satisfaction of the Equitable Distribution award.
2. The Ex-Spouse received partial payment of the Lump Sum Alimony award, leaving a balance due in the amount of \$22,958.25 for Lump Sum Alimony. Pursuant to 11 U.S.C. § 523(a)(5), said amount is not subject to discharge.
3. The Debtor shall have ten days to file an amended chapter 13 plan in accordance with this Order.

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Copies furnished to:

Susan Lasky, Esq.

Jeffrey Kaiser, Esq.

Robin Weiner

AUST